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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

THE SCO GROUP, INC.,
a Delaware corporation,

Plaintiff,
vs.

INTERNATIONAL BUSINESS MACHINES
CORPORATION, a New York corporation,

Defendant.

SECOND AMENDED COMPLAINT

(Jury Trial Demanded)

Case No. 03-CV-0294

Hon. Dale A. Kimball
Magistrate Judge Brooke C. Wells

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Plaintiff, The SCO Group, Inc., a Delaware corporation ("SCO"), sues Defendant International Business Machines Corporation ("IBM") and alleges as follows:

Nature of This Action

1. UNIX is a computer operating system program and related software and documentation originally developed by AT&T Bell Laboratories ("AT&T"). UNIX is widely used in the corporate, or "enterprise," computing environment.
2. Through a series of corporate acquisitions, SCO presently owns all right, title and interest in and to UNIX and UnixWare operating system source code, software and sublicensing agreements, together with copyrights, additional licensing rights in and to UNIX and UnixWare, and claims against all parties breaching such agreements. Through agreements with UNIX vendors, SCO controls the right of all UNIX vendors to use and distribute UNIX. These restrictions on the use and distribution of UNIX are designed to protect the economic value of UNIX.
3. A variant or clone of UNIX currently exists in the computer marketplace called "Linux." Linux is, in material part, based upon UNIX source code and methods.
4. The UNIX software distribution vendors, such as IBM, are contractually and legally prohibited from giving away or disclosing proprietary UNIX source code and methods for external business purposes, such as contributions to Linux, or from otherwise using UNIX for the benefit of others. This prohibition extends to products that are modifications of, or derivative works based on, UNIX System V source code or technology. IBM is violating this prohibition, *en masse*, as though no prohibition or proprietary restrictions exist at all.

43. As Intel's prominence grew in the enterprise computing market, SCO's early version of OpenServer also grew into the operating system of choice for enterprise customers who wanted an Intel-based computing solution for a high volume of repetitive computing transactions.

44. SCO OpenServer is based on the original UNIX Software Code developed by AT&T, but was modified by SCO for the functionality described above. Thus, while performing single-function applications, SCO OpenServer did so, and continues to do so, with the 99.999% reliability of UNIX.

45. Over 4,000 separate applications have been written by developers around the world specifically for SCO OpenServer. Most of these applications are vertical applications for targeted functions, such as point-of-sale control for specific industries, inventory control for specific industries, and related functions.

SCO's Development of UnixWare on Intel

46. While the original SCO OpenServer operating system performs with all the reliability and dependability of other UNIX systems, it was originally designed for the initially low processing power of Intel chips. Therefore, SCO OpenServer does not offer the same level of multiprocessor capabilities that other flavors of UNIX offer.

47. During or about 1993, SCO's predecessor in interest, Novell, Inc. ("Novell"), acquired from AT&T all right, title and interest in and to the UNIX software code, the AT&T Software and Sublicensing Agreements, the copyrights and related and ancillary products. For branding purposes, Novell renamed UNIX as "UnixWare."

48. On or about September 19, 1995, The Santa Cruz Operation, Inc. acquired all right, title

and interest in and to UNIX and UnixWare source code, the AT&T Software and Sublicensing Agreements, the copyrights, claims arising after the closing date against any party and all related and ancillary products and rights from Novell, excepting only the right to certain existing ongoing royalty payments which was retained by Novell.

49. From and after September 1995, SCO dedicated significant amounts of funding and a large number of UNIX software engineers, many of whom were original AT&T UNIX software engineers, to upgrade UnixWare for high-performance computing on Intel processors.
50. By approximately 1998, SCO had completed the majority of this task. That is to say, UnixWare had largely been modified, tested and “enterprise hardened” to use Intel-based processors in competition against IBM and Power PC chips, the Sun SPARC chip and all other high-performance computing UNIX platforms for all complex computing demands. The term “enterprise hardened” means to assure that a software product is fully capable of performing under the rigorous demands of enterprise use.
51. SCO was ready to offer large enterprise customers high-end UNIX computing platforms based on inexpensive Intel processors. Given the rapid growth of Intel’s performance capabilities and Intel’s popularity in the marketplace, SCO found itself in a highly desirable market position. In addition, SCO still had its SCO OpenServer business for retail and inventory-targeted functions, with its 4,000 applications.
52. Prior to the events complained of in this action, SCO was the undisputed global leader in the design and distribution of commercial UNIX-based operating systems on Intel-based processing platforms.